Water Rates Task Force Legal Overview February 14, 2017

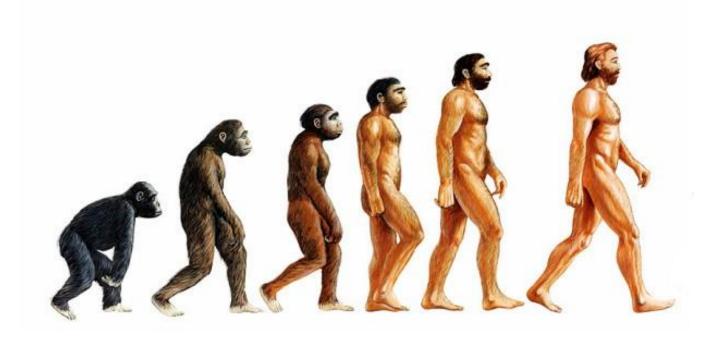


Overview

- History of Propositions, Taxes, and Fees
- Proposition 218
 - Constitutional requirements to increase water fees
- Legislative Clarity
- Legal Clarity
 - San Juan Capistrano decision



History How did we get here?



Proposition 13 Background

- Prior to 1978
 - Property taxes funded costs of infrastructure and municipal services needed to keep pace with new growth and an expanding population
 - Mid-60's in response to scandals among assessors, legislation passed to peg assessed values to market value of properties triggering increased property taxes



Proposition 13 Background

- Property values increased 70% between 1975 and 1978 (due to housing demand)
- Retired property owners particularly hard hit
- Triggered initiative measure seeking property taxpayer relief



Proposition 13 (1978)

- Property tax rate limitation (Article XIII A, section 1) Maximum amount of property tax limited to 1% of full cash value
 - Max limit on assessments (no more than 2% per year)
- Restriction on local taxes (Article XIII A, section
 4) Cities, by a 2/3rds vote of qualified electors, may impose special taxes



Proposition 13 Impact

- Reduced property tax revenues to local governments by more than half (57% decline)
- Abolished any local control with regard to property taxes
- Forced cities to look for new sources of revenue to fund increasing demands for municipal services



Proposition 62 (1986)

- Reaction to various forms of new local taxes and increases in fees in the wake of Proposition 13
- Restated 2/3 voter
 approval requirement for special taxes and established majority voter
 approval for general taxes



Proposition 218 (1996)

- Expanded restrictions on government spending
- Allowed voters to <u>repeal or</u> <u>reduce existing</u> taxes, assessments,
 - fees, and charges by initiative process
- Reiterated voter approval requirements for general taxes (majority) and special taxes (2/3)





Proposition 218 Property-Related Fees: Article XIII D, § 6 Procedural Requirements





Proposition 218 Article XIII D, § 6(a)

- Section 6(a) established procedural requirements for imposing new, or increasing existing property-related fees and charges:
 - Must hold a public hearing and mail notice of the public hearing not less than 45 days prior to the public hearing
 - Rates may not be imposed if there is a majority protest



Procedural Requirements

- Notice must contain:
 - the amount of the fees or charges proposed to be imposed;
 - the basis upon which the fees or charges were calculated;
 - Notice can refer to City website for full report
 - See, Great Oaks v. Santa Clara Valley Water Dist., (2015) 239 Cal. App. 4th 456 ("disclosing the rate and the unit of measure, the District disclosed all that possibly could be disclosed of the "basis upon which the amount of the proposed fee or charge [would be] calculated").
 - a statement regarding the reason for the imposition of the new, or increases to the existing, fees or charges; and
 - the date, time, and location of the public hearing



Proposition 218 Article XIII D, § 6(b)

- Section 6(b) established substantive provisions:
 - Revenues derived from the fee or charge <u>shall not</u> exceed the funds required to provide the property related service.
 - Revenues derived from the fee <u>shall not</u> be used for any purpose other than that for which the fee was imposed
 - Fees <u>shall not</u> exceed the proportional cost of the service attributable to the parcel



Proposition 218 Article XIII D, § 6(b)

- Fees may not be imposed for a service unless the service is actually used by or immediately available to the owner of the property
- No fee may be imposed for general governmental services including, but not limited to, police, fire, ambulance or library services where the service is available to the public at large
- The burden is on the agency to demonstrate compliance



Clarifying Legislation: Property-Related Fees





Definitions – GC § 53750(e)&(h)

Increased Fee does NOT include:

- A fee that is implemented or collected so long as:
 - the rate is not increased beyond the level previously approved by the agency, and
 - the methodology previously approved by the agency is not revised so as to result in an increase in the amount being levied on any person or parcel



Definitions – GC § 53750(m)

- "Water" means any system of public improvements intended to provide for the production, storage, supply, treatment, or distribution of water from any source
 - Including Recycled Water





Notices and Majority Protests – GC § 53755

- Notice may be given by including it in :
 - Agency's regular billing statement
 - Any other mailing by the agency to which the billing statement is customarily mailed
- Notice may be given by another agency
- Written protests must be retained by the agency for a minimum period of two years following the date of the public hearing



Majority Protests – GC § 53755

One written protest *per parcel*, whether filed by one or several owners or tenants of the parcel, shall be counted in calculating a majority protest



Automatic Adjustments – GC § 53756

- Applies to water and sewer fees
- Adopt a schedule of fees with automatic adjustments for inflation or pass through increases in wholesale water, sewage and wastewater treatment charges







Automatic Adjustments – GC § 53756

- Schedule of fees or charges may not exceed 5 years
- May include a schedule of adjustments, including a clearly defined formula for adjusting for inflation
- May include schedule of adjustments that pass through the adopted increases or decreases in wholesale charges



Automatic Adjustments – GC § 53756



- Automatic adjustments may not exceed the cost of providing the service
- Agency not required to follow notice provisions of Article XIII D, section 6(a) for automatic adjustments
- BUT, must send written notice by mail at least 30 days prior to the rate adjustment

Judicial Interpretations: Property-Related Fees





Mission Springs Water Dist. v. Verjil (2013)

- Invalidated voter initiative to repeal the District's water rates
- A County Water District is required to have sufficient funds to meet its statutory obligations to provide water service

Griffith v. Pajaro Valley Water Mgmt. Agency (2014)

- Charges may be used to fund debt service
 - i.e. bonds
 - So long as debt was incurred to build infrastructure for the service
- Charges may be used to fund recycled water service
 - Including cost to install infrastructure to provide recycled water



Griffith v. Pajaro Valley Water Mgmt. Agency (2014)

- Property-related fees do not need to be established parcel-by-parcel
- Rate-makers may group similar users together (i.e., calculate fees on a class-by-class basis)
- "Apportionment is not a determination that lends itself to precise calculation"



Bighorn Desert-View Water Agency v. Verjil (2006)

- Water service fees are property-related fees
- By implication, wastewater and solid waste service fees are property-related fees



- Inclining block rates that go up progressively in relation to usage, are compatible with Article XIII D, § 6(b)
- City failed to demonstrate that the tiers correspond to the actual cost of providing service at a given level of usage





- "While tiered, or inclined rates that go up progressively in relation to usage *are perfectly consonant* with *article XIII D, section 6, subdivision (b)(3),* the tiers must still *correspond to the actual cost of providing service at a given level of usage.*"
- "As we will say numerous times in this opinion, tiered water rate structures and Proposition 218 are *thoroughly compatible 'so long as'* those rates reasonably reflect the cost of service attributable to each parcel."



- Potable customers may be required to pay capital costs of a recycled water system
- Recycled water is a new source of water
- Government Code §
 53750(m) water is part of a holistic distribution
 system





- Ultimate takeaway:
 - Tiers rates are legal ... BUT
 - More likely subject to legal challenge by holding in San Juan Capistrano
 - Must justify the rate charged to each tier consistent with the cost of service
 - May be difficult to do depending on how water is obtained



Questions?

